

NPM No. 010-2017

27 June 2017

MS. ELENIDA DR. BASUG

Chairperson, Bids and Awards Committee (BAC)

ENVIRONMENTAL MANAGEMENT BUREAU (EMB)

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR)

DENR Compound, Visayas Avenue,

Diliman, Quezon City


Re: Construction Safety and Health Program

Dear Ms. Basug:

This refers to your letter seeking our opinion on whether DENR-EMB shall continue with the opening of the financial proposal of the reconsidered bid or declare a failure of bidding on the ground that both bidders did not qualify with the requirement to submit approved Construction Safety and Health Program (CSHP) as provided in the Supplemental Bulletin.

It is represented that the BAC of DENR-EMB issued a Supplemental Bulletin on 3 November 2016 stating that an approved CSHP is required to be submitted on the deadline for submission of bids as advised by the Department of Labor and Employment (DOLE). During the bid opening on 9 November 2016, only two bidders submitted their bids - C.B. Garay and TRIBU; the former submitted an approved CSHP, while the latter's CSHP was not approved. On 10 November 2016, TRIBU filed a request for reconsideration to the BAC contending that the requirement runs counter to DPWH Department Order (D.O.) No. 56¹. TRIBU pointed out that under the D.O., the contractor is just supposed to submit a proposed CSHP as part of its first envelope, and upon winning the bid, submit the CSHP for approval to the DPWH, subject to the concurrence by the DOLE, which is why TRIBU failed to comply with the requirement of an approved CSHP.

The DENR-EMB BAC granted the request for reconsideration. However, the scheduled opening of TRIBU's financial proposal was postponed as it was contested by C.B. Garay. It was likewise discovered that the CSHP submitted by C.B. Garay did not comply with the requirement because its approval was not specific to the project at hand. As an offshoot of these factual circumstances, the BAC is in a dilemma on whether to proceed with the opening of the financial envelope of the reconsidered bid or to declare a failure of bidding, considering that both bidders were not able to submit an approved CSHP as required.

At the outset, please be guided that the CSHP is not an eligibility requirement, nor is it a requirement under the technical and financial components of the bid, which must be submitted during the deadline for submission of bids. Under Section 37.2.3(f) of the 2016 Revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, the CSHP shall form part of the contract between the winning bidder and the Procuring Entity (PE), thus: 

¹Series of 2005.

37.2.3. The following documents shall form part of the contract:

xxx

f) Other contract documents that may be required by existing laws and/or the Procuring Entity concerned in the Bidding Documents, such as the construction schedule and S-curve, manpower schedule, construction methods, equipment utilization schedule, **construction safety and health program** approved by the Department of Labor and Employment, and PERT/CPM or other acceptable tools of project scheduling for infrastructure projects.

Section 37.2.3 recognizes Department of Labor and Employment (DOLE) Department Order (DO) No. 13 Series of 1998, dated 23 July 1998, entitled *Guidelines Governing Occupational Safety and Health in the Construction Industry*, issued to implement the mandate of Article 162 of the Labor Code of the Philippines, which provides that the Secretary of Labor and Employment shall, by appropriate orders, set and enforce mandatory occupational safety and health standards to eliminate or reduce occupational safety and health hazards in all workplaces and institute new, and update existing, programs to ensure safe and healthful working conditions in all places. Under the said Guidelines, every construction project is required to have a suitable Construction Safety and Health Program.

On the other hand, DPWH D.O. No. 56, Series of 2005, dated 20 April 2005, entitled *Guidelines for the Implementation of DOLE DO No. 13 on Occupational Safety and Health in Construction Industry*, provides that the contractor's proposed CSHP shall be in accordance with DOLE DO No. 13 and "its Procedural Guidelines to be submitted as part of the first envelope (Technical Proposal) during the bidding process, and later, the winning bidder shall submit the same for approval of the DPWH authority, subject to concurrence by DOLE". This requirement only applies to contractors engaged by DPWH to perform public construction projects, and therefore, not applicable to other Procuring Entities such as the DENR-EMB.

Accordingly, the bidders should not have been required to submit an approved CSHP as part of their bids, *i.e.* technical or financial proposals. It is only upon the issuance of the Notice of Award that the winning bidder is supposed to submit the same along with the other documents required under Section 37.2.3. In an earlier opinion², we opined that PEs are *proscribed* from requiring *additional eligibility requirements*. The list of minimum eligibility requirements under the IRR of RA 9184 has been streamlined/simplified, such that only those requirements enumerated in Sections 23.1, 24.1, and 25.1 of the IRR are necessary for purposes of determining bidder's eligibility. The rationale for this is to allow greater participation, enhance competition among prospective bidders, and reduce transaction costs.

In this regard, while the DENR-EMB should not have required the submission of an approved CSHP during bid submission, the BAC is bound by the contents of the bidding documents and/or supplemental/bid bulletin as posted, including the submission of additional requirements not sanctioned by the rules, on the premise that the bidders would refer to the bidding documents and supplemental/bid bulletins issued by the procuring entity for information and instructions relevant to the preparation of their bids. Since both bidders are found to be non-compliant with the requirements, albeit the misgivings committed by the BAC in the bidding documents, the BAC may consider invocation of Section 35 of the IRR of RA 9184 on failure of bidding. /s/

² NPM No. 091-2014 dated 28 October 2014.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

Very truly yours,
(sgd.)

f :DENN GO
Executive Director *V*

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